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Supreme Court, U.S.  
FILED

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JOSEPH F. SPANIOL, JR.  
CLERK

No \_\_\_\_\_

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, \_\_\_\_\_

JOHN GAGLIARDI,  
Petitioner

VS

DONALD E. ZIEGLER AND  
CATHERINE MARTRANO  
Respondents

Petition for writ of certiorari  
to the United States Court of Appeals  
for the Third Circuit

John Gagliardi  
191 Wall Road  
Clairton, PA 15025  
(412) 233-7172

3482

This case presents one question for review:

In this case was it error for Donald E. Ziegler, a judge of the United States District Court for the Western District of Pennsylvania, to dismiss by memorandum opinion the complaint of a pro se litigant, John Gagliardi as frivolous, when Judge Ziegler was the principal defendant in that case? Your Petitioner suggests that the answer to this question is in the affirmative.

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PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
THIRD CIRCUIT

To the honorable, the Chief Justice and  
the Associate Justices of the said Court:

John Gagliardi, Petitioner herein, prays  
that a writ of certiorari issue to review  
the judgment of the United States Court of  
Appeals for the Third Circuit entered in  
the instant case on July 30, 1987.

OPINIONS BELOW

The memorandum opinion of the United  
States District Court for the Western  
District of Pennsylvania, Ziegler, J. which  
was dated March 3, 1987, and was  
unreported, is attached hereto in the

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appendix. The judgment of the United States Court of Appeals for the Third Circuit, entered July 30, 1987, was attached hereto in the Appendix. The order of the United States Court of Appeals for the Third Circuit sur Petition for Rehearing which was dated September 15, 1987, is placed in the appendix hereto.

#### JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered July 30, 1987. A timely Petition for Rehearing was filed by the Appellant, John Gagliardi, and was denied by the United States Court of Appeals for the Third Circuit on September 15, 1987.

At this time, the jurisdiction of the Supreme Court of the United States is



invoked under the provisions governing Petitions for writs of certiorari from the Courts of Appeals, 28 U.S.C. 1254(1), as well as under the all-writs act, 28 USC 1651, which empowers the court to enter any orders in aid of its jurisdiction, which statutory provisions are believed by the Petitioner to confer on the Supreme Court jurisdiction to entertain this Petition for writ of certiorari.

#### QUESTION PRESENTED

This case presents one question for review: In this case was it error for Donald E. Ziegler, a judge of the United States District Court for the Western District of Pennsylvania, to dismiss by memorandum opinion the complaint of a pro-se litigant, John Gagliardi as frivolous, when Judge Ziegler was the principal defendant in that case?



Your Petitioner suggests that the answer to this question is in the affirmative.

#### THE STATUTE INVOLVED

The statute involved is 28 USC 455(a) and 455(b)(5)(i).

28 USC 455(a) provides:

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 USC 455(b)(5) provides:

He shall also disqualify himself in the following circumstances: (5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person: (i) Is a party to the proceeding, or an officer, director, or trustee of a party;

#### STATEMENT OF THE CASE

THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

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1954

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This is the case of an American Citizen, John Gagliardi, who has determined to proceed in his legal cases as a pro se litigant as a result of the problems he has had in the past with licensed members of the bar, and the problems Gagliardi has encountered at the hands of one Donald E. Ziegler, a Judge of the United States District Court for the Western District of Pennsylvania, and the determination of that member of the District Court to foreclose the right of John Gagliardi to proceed as a pro se litigant and deprive John Gagliardi of his right of access to the courts of the United States of America.

John Gagliardi is an adult male and a longtime resident of Western Pennsylvania. John Gagliardi is a successful businessman, who has been involved in the welding and fabricating business and who has also





operated a large and successful warehousing business in Jefferson Borough, Clairton, PA. John Gagliardi is a husband and father, and a respected member of the community in the Clairton, PA area.

John Gagliardi is no stranger to the courts and is not in the main an unsuccessful litigant. John Gagliardi, and a company in which he has an interest, US Industrial Fabricators, Inc, have obtained a large settlement in the past against America's largest corporate monopoly, the Bell System, and its component Western Electric. Following the case with the Bell System, John Gagliardi had other troubles with the Bell System and turned to his attorneys for help, only to find that they were unavailable to help him against the Bell System since these attorneys were now attorneys for the Bell System themselves! Gagliardi was aware of vast and staggering



amounts of fraud within the Bell System and sought as a member of the ratepaying public and as a citizen to expose some of the wrongdoing, corruption, and fraud which accompanies the operation of the greatest monopoly in American History. Gagliardi then went to the Federal authorities and sought to enlist them for help, only to find that certain members of the office of the United States Attorney for the Western District of Pennsylvania had themselves been involved in the interest of the Bell System.

As a result of the frustrating experience with the employment of licensed members of the Bar, John Gagliardi some time ago decided to become his own attorney and to file and prosecute his cases as a pro se litigant. In autumn of 1986, John Gagliardi filed a number of pro se lawsuits against certain defendants in the United States

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District Court for the Western District of Pennsylvania. The cases involved were Civil Actions No 86-1659, 86-1736, 86-1956, 86-1998, 86-2068, 86-2106, and 86-2293. Judge Ziegler dismissed all the cases involved, and at case No 86-1998, the District Court also entered an order containing the following provision:

IT IS FURTHER ORDERED that the Clerk of Courts for the United States District Court for the Western District of Pennsylvania be and hereby is enjoined from filing or causing to be filed any complaint or other paper from John Gagliardi or of any known associate of John Gagliardi without first forwarding said paper to this court and obtaining approval from the undersigned.

This order of Judge Ziegler was entered without notice of any kind to John Gagliardi and with no opportunity to respond, to present a defense, or to even be aware of the pendency of the impending

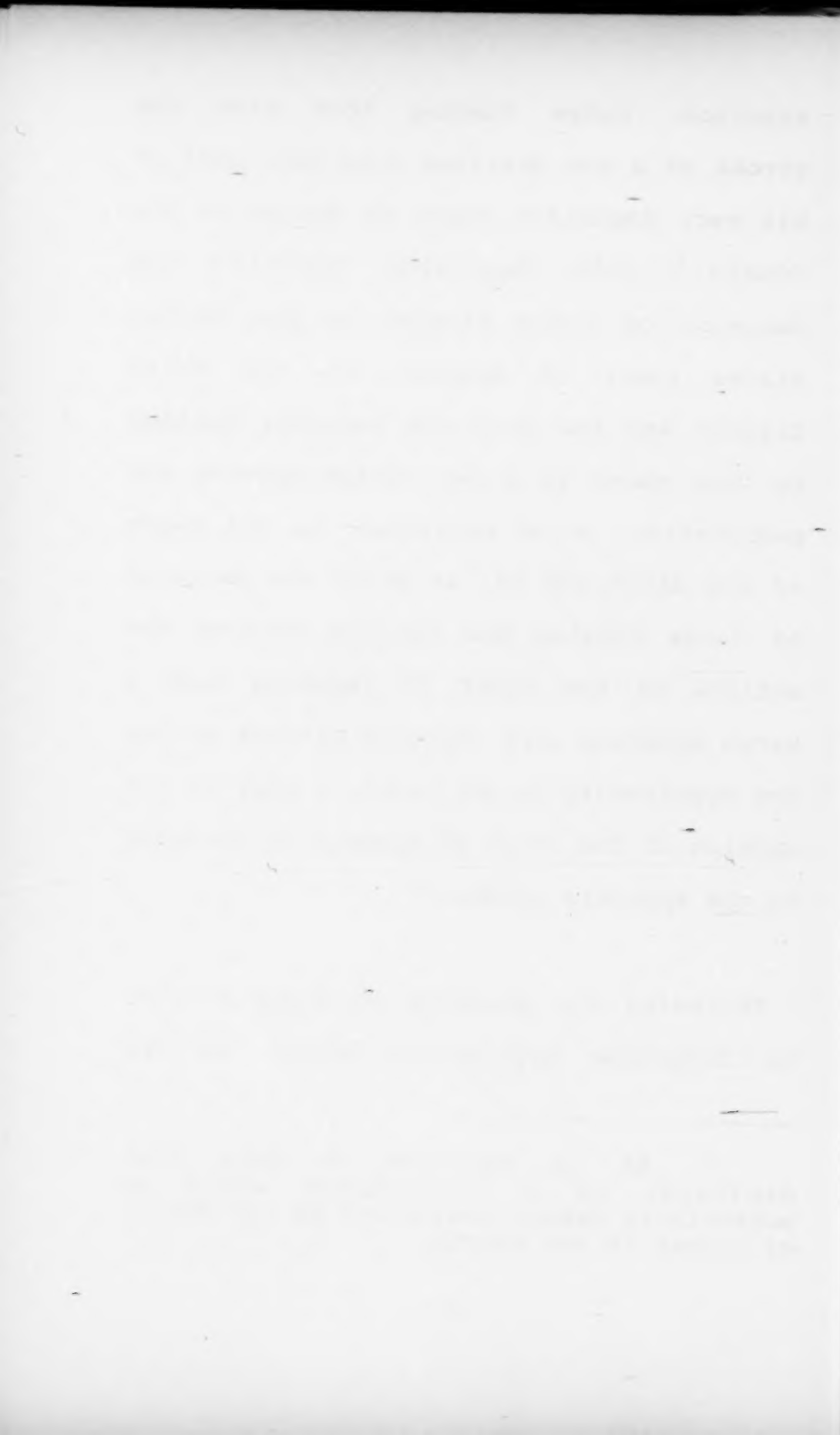


sanction. Judge Ziegler thus with the stroke of a pen deprived John Gagliardi of his very important right to access to the courts.<sup>1</sup> John Gagliardi appealed the decision of Judge Ziegler to the United States Court of Appeals for the Third Circuit and the case was recently decided by that court in a per curiam opinion for publication, which petitioner is not aware of any citations to, in which the decision of Judge Ziegler was vacated because the actions of the Court in imposing such a harsh sanction were improper without notice and opportunity to be heard. A copy of the opinion of the Court of Appeals is attached to the appendix hereto.

Following the decision of Judge Ziegler to foreclose Gagliardi's access to the

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1. It is important to note that Gagliardi as a businessman would be potentially deeply prejudiced by the denial of access to the courts.





courts, Gagliardi filed the instant case against Judge Ziegler, seeking declaratory and injunctive relief against Judge Ziegler for depriving Gagliardi of his right to access to the Courts without due process of law. Jurisdiction at that time was proper in the Federal Courts as a result of the fact that Judge Ziegler is a Federal Judge, and the actions complained of had something to do with his judicial role. Judge Ziegler then immediately entered a memorandum opinion dismissing the case against him as frivolous, vexatious, and redundant, and as part of a pattern of frivolous, vexatious and redundant litigation.

In addition, Judge Ziegler, thinking that the appeals from his order foreclosing Gagliardi from access to the courts had been dismissed from a procedural default, declared that he was correct to dismiss as his actions were final and not subject to



review as a result of the law of the case doctrine. Judge Ziegler should not have been permitted to rule on the case as a result of operation of the provisions of 28 USC 455(b)(5)(i), which provides that he should disqualify himself in a case in which he was a party. In any event, Judge Ziegler would have been subject to a motion to disqualify at the moment Gagliardi discovered that Ziegler had been appointed as Judge of the case. Judge Ziegler decided to dispose of the case in complete and total violation of the relevant portions of federal law before Gagliardi would have the opportunity to react. It should be remembered that Judge Ziegler dismissed this case on March 3, 1987, when the case was only filed on March 2, 1987, one day prior to the dismissal. The best that could be said by Gagliardi was that most members of American society do not have their own personal Federal Judge. John Gagliardi has



his own Federal Judge, but he doesn't want him! Gagliardi is the victim of one Federal Judge who has decided to arrogate to himself each and every case filed in the Federal Courts by John Gagliardi. Judge Ziegler has been overturned on appeal in his continuous attacks on Gagliardi and on the First Amendment to the Constitution of the United States, yet he continues to personally insist on taking any case filed by John Gagliardi!

In the case at bar, while the United States Attorney for the Western District of Pennsylvania, who represented Ziegler on appeal, claimed that defendant was immune from suit; this defense of immunity was waived by the trial court in dismissing the complaint, who chose to proceed as though the case were subject to dismissal as something "frivolous" and as something subject to the Law of the Case Doctrine.

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The argument concerning the law of the case doctrine has been defeated by the action of the United States Court of Appeals for the Third Circuit. Accordingly, since the judge has waived any immunity he had, the case was dismissed because it was found to be "frivolous". Since the meaning of the expression "frivolous" is something almost entirely subjective, it is certainly questionable for the Judge of the District Court to have dismissed a case as frivolous when he is the principal defendant!

The decision in the instant case was timely appealed to the United States Court of Appeals for the Third Circuit, and the decision of the District Court was affirmed by a judgment order without opinion. The Petition for rehearing en banc was also denied by the Court of Appeals without opinion. The case is now before the Supreme Court for final review.





REASONS ADVANCED IN SUPPORT

OF GRANTING THE WRIT

The most telling reason for the Court to grant certiorari in this case and hear the arguments of the parties is in the interest of protecting the integrity of the judicial system. As the Justices must be aware, the courts have been open to constant and biting criticism in recent years from a variety for sources. The main reason for the criticism of the courts is that the courts all too often produce anomalous results and at least in the perception of the public seem to protect the vested interests of institutions rather than the people of the country. There are constant allegations of impropriety which want of

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The New York Public Library, Astor Lenox Tilden Foundation, is a non-profit corporation organized for the purpose of acquiring, accumulating, and preserving books, manuscripts, and other objects of interest to the public, and for the purpose of making them accessible to the public. The Library is organized into three departments: the Department of Manuscripts, the Department of Printed Books, and the Department of Special Collections. The Department of Manuscripts is responsible for the acquisition, preservation, and study of manuscripts, and for the publication of editions of manuscripts. The Department of Printed Books is responsible for the acquisition, preservation, and study of printed books, and for the publication of editions of printed books. The Department of Special Collections is responsible for the acquisition, preservation, and study of special collections, and for the publication of editions of special collections. The Library is open to the public, and is a place of interest to all who are interested in the history and literature of the world.

answers.

This case cries out for intervention. It is one of the fundamental aspects of due process of law that the courts be impartial. The appearance of partiality is anathema to the integrity of the judicial system, because partiality undermines the very foundations on which the system of justice is built.

JUDGE ZIEGLER'S HANDLING OF THE CASE  
IS A PER SE VIOLATION OF 28 USC 455

28 USC 455(b)(5) provides:

He shall also disqualify himself in the following circumstances: (5) He or his spouse, or a person within the third degree of



relationship to either of them, or the spouse of such a person: (i) Is a party to the proceeding, or an officer, director, or trustee of a party;

In this case, Judge Ziegler was the lead and principal defendant in the case. The only other defendant was Catherine Martrano, the Clerk of the United States District Court for the Western District of Pennsylvania, and Ms. Martrano was named a defendant as a result of her enforcement of the order of the judge. There were no other defendants, and the case dealt only with the activity of Judge Ziegler in ordering John Gagliardi barred from the courts. Thus, it cannot be argued, as was advanced by the attorneys for Judge Ziegler on the appeal, that the suit was an attempt to force the judge to recuse himself and would thus interfere with the rights of others.



Such was simply not the case, because, for practical purposes, no one else was involved.

A judge cannot act on his own case, Ely Valley Mines, Inc v Lee, 385 F2d 188(1967).

The reasons for this conclusion are basic and fundamental to our system of jurisprudence, and are based on essential principals of fairness.

In this case, Judge Ziegler not only ruled on the case; he also made sure that he personally disposed of the case before anyone else had the opportunity to do anything about it, including the Plaintiff, who would have inevitably requested a disqualification. Further, it is important to examine the reasons advanced by Judge Ziegler in support of his dismissal of the complaint: Judge Ziegler stated that the suit was barred by application of the Law





of the Case doctrine. Since the Court of Appeals has vacated Judge Ziegler's underlying opinion, that is no longer the case, if ever it was. Finally, the only other reason advanced by Judge Ziegler in support of the dismissal was that the complaint was frivolous.

Since the word frivolous is an easy one to apply and is not burdened with objective standards, it makes the decision of Judge Ziegler more suspect because it is based entirely on the judge's subjective interpretation of the complaint. Such a subjective interpretation is particularly subject to reasonable questions concerning the fairness and objectivity of the court. In this manner, the conduct of the judge in ruling on the case becomes a violation of 28 USC 455(a). The question of whether the complaint was frivolous or not is not an issue at this point, but it seems very



clear that if the complaint were frivolous in reality, there would have been no reason for Judge Ziegler to arrogate to himself the job of hearing the case and dismissing it.

### IMPORTANCE OF QUESTIONS INVOLVED

It is submitted that the Court should grant the writ of certiorari in this case to review the matter for several reasons: First, the Court of Appeals determined not to make any definitive statement concerning the reasons for its judgment and the denial of the Petition for Rehearing. This case is one involving a question of the application of Federal Law which has hardly ever been encountered, in part, because the answer appears so obvious. The integrity of the judiciary requires that the Supreme Court deal with the case.



CONCLUSION

For the reasons advanced herein,  
Petitioner respectfully requests your  
honorable Court issue the writ of  
certiorari.

Respectfully submitted

*John Gagliardi*

J o h n

Gagliardi



# BEST AVAILABLE COPY

## CERTIFICATE OF SERVICE

I certify that I have on this date served the proper number of copies of the Petition and appendix on the person and at the address set forth below by First Class Mail, prepaid:

Paul Brysh, Esq.

U.S. Attorney's Office

633 US P.O. & Court House

Pittsburgh, PA 15219

Dated 12-12-87

Also served on:

*Solicitor-General of the United States  
U.S. Department of Justice  
Washington, D.C. 20530*

*John Gagliardi*

Date 12/28/87

*John Gagliardi*

Subscribed and sworn to before me this 28th day of Dec 1987  
by John Gagliardi

*Theresa A. Ciolli*

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**APPENDIX TO PETITION**

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### A. EXPLANATORY REMARKS

This Appendix contains the orders from the United States District Court for the Western District of Pennsylvania and the United States Court of Appeals for the Third Circuit which were issued in the case of John Gagliardi v Donald E. Ziegler and Catherine Martrano, which was Civil Action 87-490 in the District Court and No 87-3180 in the United States Court of Appeals for the Third Circuit. The memorandum opinion of the District Court contains references to other cases in the District Court. Those cases are not the cases on appeal in the Supreme Court. The cases cited are other cases filed by the Petitioner, John Gagliardi, involving different litigants and different questions. All were disposed of or assigned to Judge Ziegler.

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Since that time, Judge Ziegler has entered an order recusing himself from all cases involving Petitioner John Gagliardi, which would seem to indicate that this case should be remanded for assignment of another trial judge.

**ITEM 1. OPINION OF DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOHN GAGLIARDI,                     )  
    PLAINTIFF

vs   ) No 87-490

DONALD E. ZIEGLER,  
CATHERINE MARTRANO,             )  
    DEFENDANTS

**MEMORANDUM OPINION**

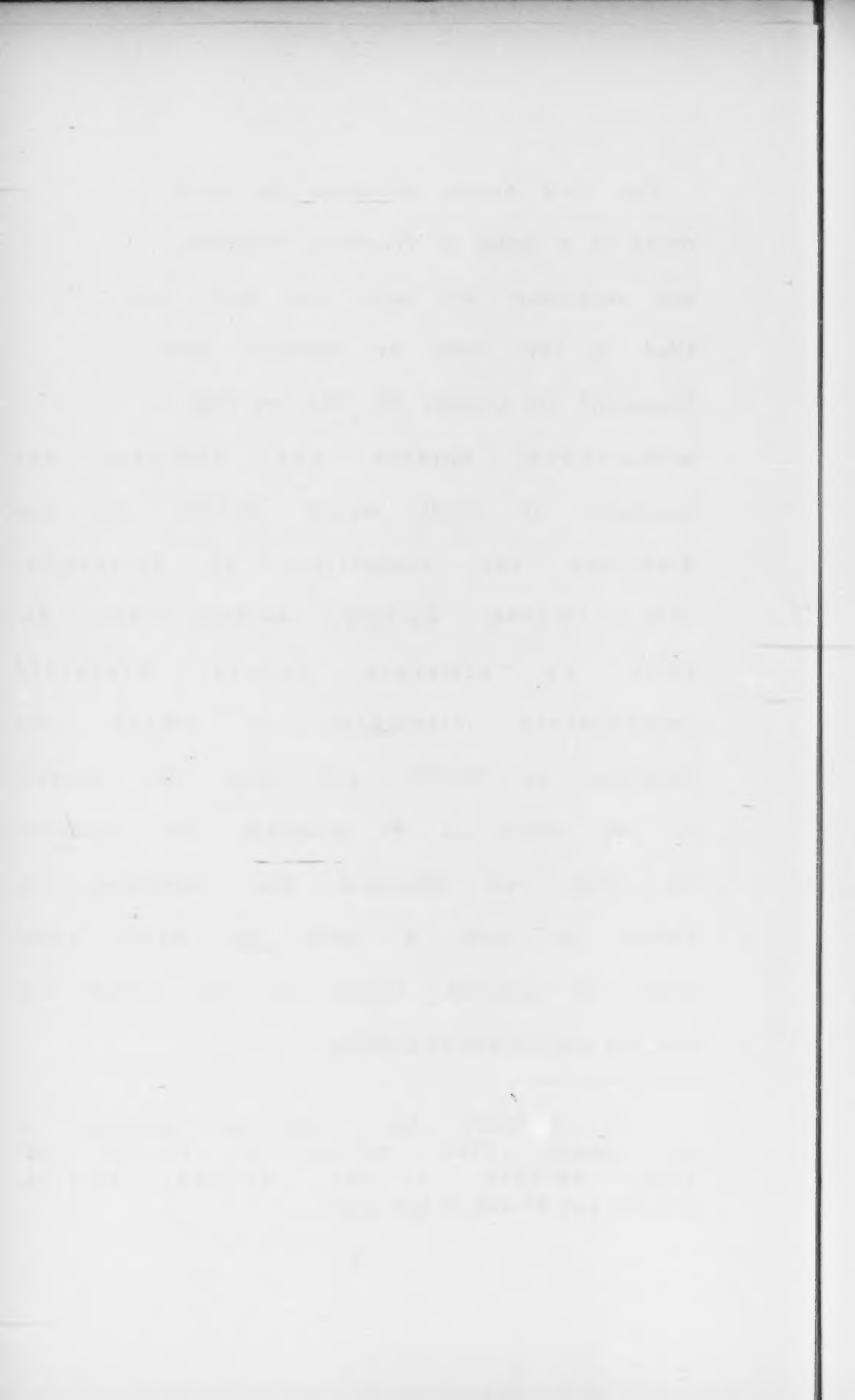
**ZIEGLER, DISTRICT JUDGE**



This civil Action represents the latest round in a series of frivolous, vexatious, and redundant law suits that have been filed in this court by plaintiff, John Gagliardi<sup>1</sup>. On October 30, 1986, we filed a memorandum opinion and dismissed the complaint at Civil Action 86-1998. We also dismissed the complaints at 86-1659, 86-1736, 86-1956, 86-2068, 86-2106, and 86-2293 by separate orders. Plaintiff immediately attempted to amend the complaint at 86-2293 and name this member of the court as a defendant. On November 10, 1986, we dismissed that complaint for failure to state a claim on which relief could be granted. Copies of the orders are attached and marked as exhibits.

---

<sup>1</sup>. Plaintiff has filed or pending, or on appeal, Civil Actions at 86-1659, 86-1736, 86-1956, 86-1998, 86-2068, 86-2106, 86-2293, and 87-490, at last count.





Plaintiff took appeals to the United States Court of Appeals<sup>2</sup> and, when Plaintiff failed to timely prosecute at 86-1956, the appellate court dismissed the appeal.

The instant complaint contains a repetition of the issues which plaintiff is advancing on appeal at Civil Action 86-2293, except that plaintiff has added the Clerk of Court as a defendant for following the order of this court dated October 30, 1986. The order of this court at 86-2293 represents the law of the case until the Court of Appeals determines otherwise, and therefore the complaint will be dismissed for redundancy. A party may not relitigate issues previously resolved at his or her whim. Indeed, the instant complaint makes

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<sup>2</sup>. Plaintiff did not appeal the judgments at 86-1659 and 86-1736.

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clear that our order of October 30, 1987  
was sound.

A written order will follow.

Dated March 3, 1987

S/Donald E. Ziegler

**ITEM 2: JUDGMENT ORDER OF THE COURT OF  
APPEALS**

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

---

No 87-3180

---

**JOHN GAGLIARDI  
APPELLANT**

vs

**JUDGE DONALD E. ZIEGLER  
AND CATHERINE MARTRANO**

---

Appeal from the United States District  
Court for the Western District of  
Pennsylvania-Pittsburgh(D.C. Civil Action

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THE UNIVERSITY OF CHICAGO

No 87-00490) District Judge: Honorable  
Donald E. Ziegler.

Submitted under Third Circuit Rule 12(6)  
July 9, 1987

Before: HIGGINBOTHAM, SLOVITER, and Van  
DUSEN, Circuit Judges

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JUDGMENT ORDER

After consideration of all contentions  
raised by appellant, it is

ADJUDGED AND ORDERED that the judgment  
of the district court be and hereby is  
AFFIRMED.

Costs taxed against appellant.

BY THE COURT

S/HIGGINBOTHAM, J.

3. ITEM 3. ORDER SUR REHEARING

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UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No 87-3180

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JOHN GAGLIARDI  
APPELLANT

vs

JUDGE DONALD E. ZIEGLER  
AND CATHERINE MARTRANO

---

Appeal from the United States District  
Court for the Western District of  
Pennsylvania-Pittsburgh(D.C. Civil Action  
No 87-00490) District Judge: Honorable  
Donald E. Ziegler.

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SUR PETITION FOR REHEARING

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Present: GIBBONS, Chief Judge, SEITZ,  
WEIS, HIGGINBOTHAM, SLOVITER, BECKER,  
STAPLETON, MANSMANN, GREENBERG, and VAN  
DUSEN, Circuit Judges.

The petition for rehearing filed by  
appellant in the above-entitled case having  
been submitted to the judges who  
participated in the decision of this court

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and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and by the Court en Banc, is hereby denied.

BY THE COURT

S/ HIGGINBOTHAM, J.

FILED

MAR 7 1988

JOSEPH F. SPANIOLO, J.  
CLERK

No. 87-1139

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**In the Supreme Court of the United States****OCTOBER TERM, 1987**

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**JOHN GAGLIARDI, PETITIONER**

v.

**DONALD E. ZIEGLER AND CATHERINE MARTRANO**

---

**ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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**MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION**

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**CHARLES FRIED**  
*Solicitor General*  
*Department of Justice*  
*Washington, D.C. 20530*  
*(202) 633-2217*

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# In the Supreme Court of the United States

OCTOBER TERM, 1987

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No. 87-1139

JOHN GAGLIARDI, PETITIONER

v.

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*ON PETITION FOR A WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT*

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## MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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Petitioner contends that United States District Court Judge Donald E. Ziegler should have disqualified himself from a suit naming the judge as a party-defendant and seeking injunctive and declaratory relief as well as personal damages for injuries allegedly caused by the judge's order in a prior proceeding.

1. In *Gagliardi v. McWilliams*, No. 86 Civ. 1998 (W.D. Pa. Oct. 30, 1986), Judge Ziegler entered an order pursuant to Rule 11 of the Federal Rules of Civil Procedure barring petitioner from filing any further complaints or other papers in the United States District Court for the Western District of Pennsylvania without leave of the court. Between August 6, 1986, and October 29, 1986, petitioner had filed in the district court seven complaints alleging violations of various civil rights statutes and naming as defendants a total of 181 parties (see Supp. App. on Appeal 4-23, listing docket entries for Civil Action Nos.

86-1659, 86-1738, 86-1956, 86-1998, 86-2068, 86-2106, and 86-2293). Judge Ziegler noted that petitioner had not stated a cognizable claim in any of these actions (*McWilliams*, slip op. 3, *reprinted in* Supp. App. on Appeal 26)<sup>1</sup> and concluded that a Rule 11 sanction was necessary to “protect the multitude of defendants currently sued or contemplated to be sued by Mr. Gagliardi from harrassment, vexation and needless legal expenses” (*ibid.*). Accordingly, Judge Ziegler ordered that “the Clerk of Courts for the United States District Court for the Western District of Pennsylvania be and hereby is enjoined from filing or causing to be filed any complaint or other paper from John Gagliardi or any known associate of John Gagliardi without first forwarding said paper to this court and obtaining [Judge Ziegler’s] approval \* \* \*” (Supp. App. on Appeal 28).

Petitioner appealed to the United States Court of Appeals for the Third Circuit. On April 6, 1987, the court of appeals stayed the Rule 11 order pending resolution of the appeal. The court of appeals subsequently vacated Judge Ziegler’s order, holding that the district court erred in entering the Rule 11 sanction without affording petitioner notice and an opportunity to be heard. *Gagliardi v. McWilliams*, 834 F.2d 81, 82-83 (per curiam). The court of appeals, however, expressly refrained from deciding whether petitioner’s filing of seven frivolous lawsuits against multiple defendants was such an abuse of the judicial process as to warrant imposition of sanctions;

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<sup>1</sup> All of these complaints alleged conspiracies on the part of the defendants to violate petitioner’s civil rights. The complaints, however, failed to state facts evidencing a conspiracy. The district court therefore dismissed each action for failure to state a claim upon which relief could be granted. See *Gagliardi v. McWilliams*, 834 F.2d 81, 82 (3d Cir. 1987) (per curiam).



instead, it remanded the case to the district court with instructions to give petitioner notice to show cause why injunctive relief should not issue (*id.* at 83).

2. On March 2, 1987, while petitioner's challenge to the district court's Rule 11 order was pending before the court of appeals, petitioner filed this action against Judge Ziegler and the District Court Clerk, Catherine Martrano. The complaint alleged that the Rule 11 order of October 30, 1986 deprived petitioner of his right to sue without due process of law, that Judge Ziegler lacked Article III jurisdiction to enter such an order, that Judge Ziegler's actions constituted a "forbidden judicial Bill of Attainder," that the Clerk of the Court had participated in an illegal scheme by enforcing Judge Ziegler's order, and that petitioner had consequently suffered damage to his person, reputation, and business (Complaint 2-3). Petitioner therefore demanded declaratory and injunctive relief from past and future orders limiting his access to the courts. In addition, he sought \$10,000 in damages. *Id.* at 3-4.

On March 3, 1987, Judge Ziegler, noting that the action "represents the latest round in a series of frivolous, vexatious, and redundant law suits" filed by petitioner (Pet. App. 3), dismissed the complaint for failure to state a claim on which relief could be granted. The court reasoned that the complaint simply repeated issues that had been previously resolved against petitioner in another case, Civil Action No. 86-2293. There, petitioner had attempted to amend the complaint to add Judge Ziegler as a defendant. The amended complaint, however, was subsequently dismissed for failure to state a claim on which relief could be granted.<sup>2</sup> Judge Ziegler held that petitioner could not

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<sup>2</sup> Petitioner appealed No. 86-2293 to the Third Circuit. The appeal, however, was dismissed for failure to prosecute the case in a timely manner (Supp. App. on Appeal 22, Clerk's Notation of Record No. 7).



relitigate issues previously resolved against him and therefore dismissed petitioner's complaint (Pet. App. 3-4).

3. Petitioner challenged the dismissal of this action through two different avenues of review. Petitioner first appealed the dismissal of the complaint to the Third Circuit. Petitioner argued that Judge Ziegler should have recused himself because he was a named defendant. On July 30, 1987, the court of appeals issued a judgment order affirming the decision below without opinion (Pet. App. 5-6). On September 15, 1987, petitioner's request for rehearing by the panel and by the court of appeals en banc was denied.

Petitioner also filed a complaint against Judge Ziegler with the Judicial Council of the Third Circuit. On March 30, 1987, Chief Judge Gibbons found petitioner's allegations of impropriety to be frivolous and dismissed the complaint (Supp. App. on Appeal 38-42). Judge Gibbons noted that the courts had uniformly held that the mere naming of a judge as a defendant does not per se necessitate recusal (*id.* at 40). Judge Gibbons also stressed that 28 U.S.C. (& Supp. III) 372—the statutory provision governing complaints of judicial misconduct filed with the Judicial Council—was not intended to provide disgruntled litigants with an alternative means of challenging judicial actions that could be reviewed by appeal or mandamus (*ibid.*).<sup>3</sup>

4. During this time, petitioner continued to file new civil actions in district court. On November 1, 1987, petitioner filed a petition for a writ of habeas corpus allegedly on behalf of Janice Bochter, a defendant sentenced by Judge Ziegler in a criminal case (see *United States ex rel.*

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<sup>3</sup> Petitioner filed a petition for review of Judge Gibbons' decision. On June 2, 1987, the Judicial Council dismissed the petition for review for the reasons set forth in Judge Gibbons' earlier order.

*Bochter v. Meese*, No. 87 Civ. 2463 (W.D. Pa.)).<sup>4</sup> Judge Ziegler found that the habeas corpus petition was frivolous, vexatious, and redundant and issued an order requiring petitioner to show cause why he should not again be enjoined from filing actions in district court (*Bochter*, Order of Nov. 19, 1987).

In the interim, the Third Circuit overturned Judge Ziegler's prior Rule 11 order in *McWilliams*. Judge Ziegler subsequently discharged his show cause order in *Bochter* and, in addition, entered an order dissolving any impediments to petitioner's access to the court. Judge Ziegler also issued an order directing the Clerk to reassign several actions maintained by petitioner to another member of the court and recused himself from all future litigation instituted by petitioner (*Bochter*, Order of Dec. 21, 1987).

5. The lower courts have uniformly held that the mere fact that a judge is named as a defendant in a lawsuit does not per se necessitate recusal. Indeed, where the suit naming the judge as a defendant focuses on judicial orders entered in the course of prior litigation, a rule requiring recusal would aid a litigant in frustrating the ordinary processes of appellate review and improperly expose the judiciary to vexatious damage claims that are plainly barred by absolute judicial immunity.

a. In amending the recusal provisions set out in 28 U.S.C. 455, Congress cautioned that litigants "are not entitled to judges of their own choice" and advised that "each judge must be alert to avoid the possibility that those who would question his impartiality are in fact seeking to avoid the consequences of his expected adverse decision." H.R.

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<sup>4</sup> The court later determined that *Bochter* had never authorized petitioner to maintain any proceeding on her behalf or to represent her in any fashion whatsoever (Dec. 21, 1987 Hearing Tr. at 7, *United States ex rel. Bochter v. Meese*, No. 87 Civ. 2463 (W.D. Pa.)).

Rep. 93-1453, 93d Cong., 2d Sess. 5 (1974). A litigant cannot force a judge to disqualify himself from presiding over a matter by the simple expedient of filing suit against the judge. To the contrary, every lower court to address the question has agreed that a judge is not disqualified under 28 U.S.C. 455 merely because a litigant sues or threatens to sue him. *United States v. Grismore*, 564 F.2d 929, 933 (10th Cir. 1977), cert. denied, 435 U.S. 954 (1978); *United States v. Studley*, 783 F.2d 934, 940 (9th Cir. 1986); *Ronwin v. State Bar of Arizona*, 686 F.2d 692, 701 (9th Cir. 1981), cert. denied, 461 U.S. 938 (1983), rev'd on other grounds, 466 U.S. 558 (1984); *United States v. Blohm*, 579 F. Supp. 495, 505 (S.D.N.Y. 1983); *In re Martin-Trigona*, 573 F. Supp. 1237 (D. Conn. 1983), appeal dismissed, 770 F.2d 157 (2d Cir. 1985) (Table), cert. denied, 475 U.S. 1058 (1986); *Winslow v. Lehr*, 641 F. Supp. 1237, 1241 (D. Colo. 1986).

The central purpose of 28 U.S.C. 455 is to ensure litigants a fair forum in which to pursue their claims. *United States v. Will*, 449 U.S. 200, 217 (1980). Petitioner's suggestion that a judge must disqualify himself whenever he is named as a party to the litigation would frustrate rather than advance this objective. Indeed, the rule urged by petitioner would, as the facts of this case illustrate, permit litigants to circumvent the ordinary process of appellate review by appending frivolous damages claims to suits that merely challenge a prior judicial act. Each of petitioner's claims for relief in this action is predicated *solely* on the assertion that Judge Ziegler's prior Rule 11 order was improper. Such contentions can be—and were—reviewed on direct appeal. Here, however, petitioner also seeks to obtain collateral review of Judge Ziegler's order by raising the same legal contentions in a new civil action naming members of the court as defendants.

b. Moreover, petitioner's complaint does not state any cognizable claim implicating personal interests of the defendants; there is consequently no basis for recusal. First, petitioner's demand for injunctive and declaratory relief essentially seeks a new district court order lifting Judge Ziegler's previously imposed Rule 11 sanctions and freeing petitioner from any prospective limitation on his right to bring suit in district court (Complaint 3-4). As such, petitioner's demand for "equitable" relief against Judge Ziegler is, in substance, merely the functional equivalent of a request for reconsideration of the judge's prior order. Nothing in 28 U.S.C. 455 suggests that a judge's personal interest in his prior orders is so great that he must disqualify himself when presented with a request for reconsideration. To the contrary, Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure expressly contemplate that a judge may entertain requests for reconsideration of his or her own decisions. The bare fact that a litigant misguidedly denominates the judge as a defendant does not compel a different result.

Second, while the damages claims do implicate the defendants' personal interests, these claims are so plainly and unequivocally barred by judicial immunity that any possibility of an adverse effect on the judge's personal interests is too remote and insubstantial to require recusal. Cf. *Glick v. Koenig*, 766 F.2d 265 (7th Cir. 1985) (judge properly dismissed suit seeking damages against him for prior judicial acts because action was clearly barred by judicial immunity). It is well settled that judges, as well as other individuals who are an integral part of the judicial process, are absolutely immune from damage claims arising out of official actions taken in furtherance of a judicial function. *Forrester v. White*, No. 86-761 (Jan. 12, 1988); *Briscoe v. LaHue*, 460 U.S. 325 (1983); *Stump v. Sparkman*, 435 U.S. 349 (1978); *Imbler v. Pachtman*, 424

U.S. 409 (1976); *Pierson v. Ray*, 386 U.S. 547 (1967). Accordingly, unless the judicial action in question is taken in the clear absence of all jurisdiction, a judge is immune from all liability for his judicial decisions and orders, even if his actions were in error or in excess of his authority. *Forrester v. White, supra*; *Stump v. Sparkman*, 435 U.S. at 356-357.

There is no question that both defendants are entitled to absolute immunity in this case. First, the challenged conduct arises out of official judicial actions undertaken in furtherance of a judicial function. The complaint, on its face, grounds petitioner's claims exclusively on Judge Ziegler's Rule 11 order and the Clerk's enforcement of that order (Complaint 2). Petitioner has himself made it clear that "the case dealt only with the activity of Judge Ziegler in ordering John Gagliardi barred from the courts" (Pet. 16). Second, Judge Ziegler was well within his jurisdiction in limiting petitioner's ability to file further vexatious and frivolous complaints. The sanctions against petitioner were entered in the course of an on-going civil action pursuant to the court's inherent power under Rule 11 to limit perceived abuses of judicial process. Such sanctions, even if deemed to be inappropriate, are squarely within the ambit of the court's jurisdiction and therefore cannot give rise to personal liability to an aggrieved litigant.

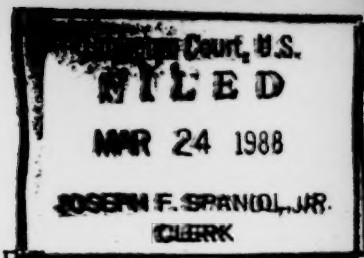
It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED  
*Solicitor General*

MARCH 1988



No 87-1139



IN THE SUPREME COURT  
OF THE UNITED STATES

October Term, 1987

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JOHN GAGLIARDI, Petitioner

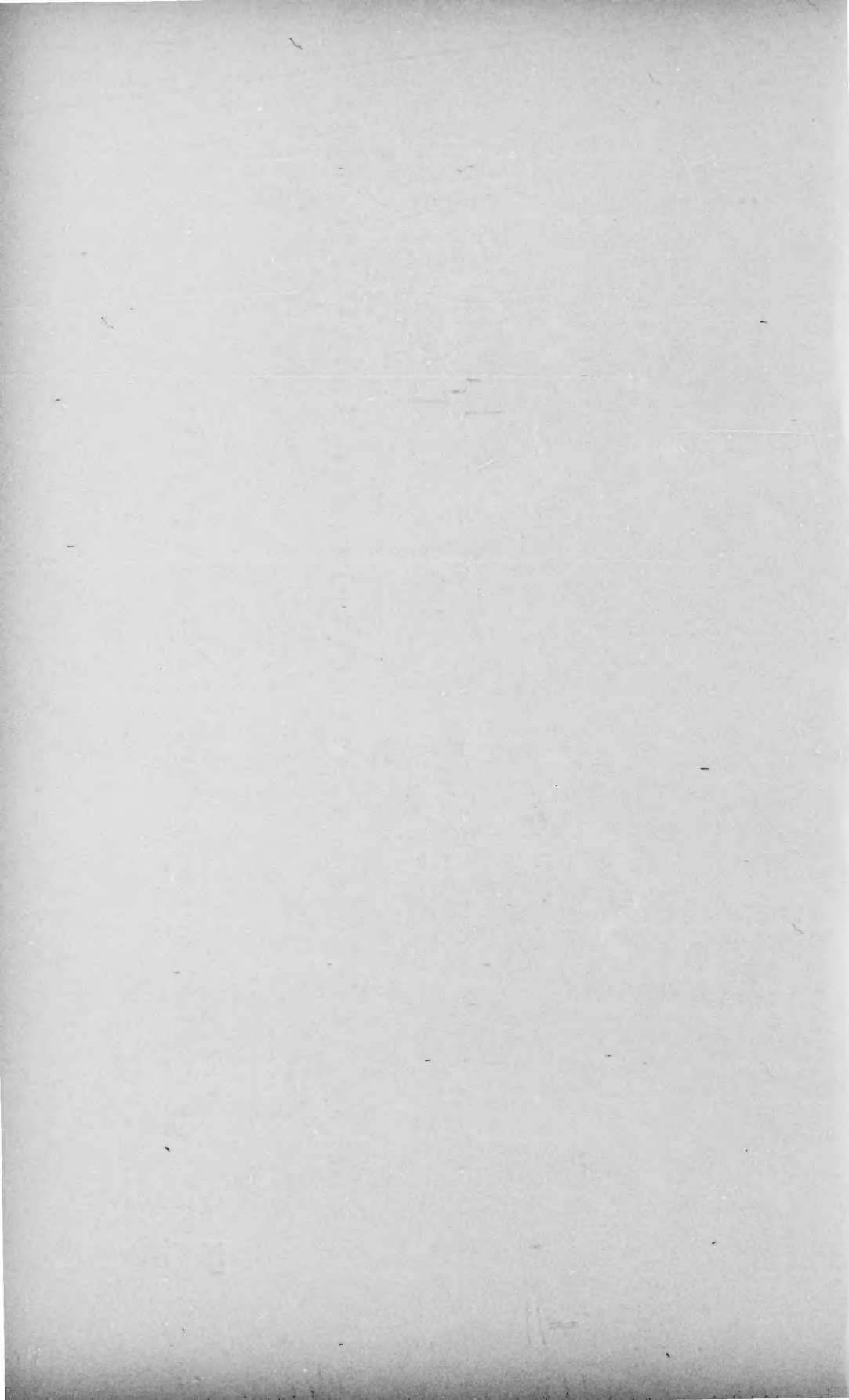
vs.

DONALD E. ZIEGLER and CATHERINE MARTRANO,  
RESPONDENTS

-----  
ON PETITION FOR A WRIT OF CERTIORARI  
TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT  
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MEMORANDUM OF PETITIONER IN RESPONSE  
TO THE MEMORANDUM IN OPPOSITION

JOHN GAGLIARDI  
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CLAIRTON, PA 15025  
412-233-7700





This memorandum is written in response to the memorandum in opposition to the petition for writ of certiorari because of the need to correct certain glaring inaccuracies in the statements made by the solicitor general in its memorandum.

Interestingly, there is no comment regarding the United States Attorney representing defendants Ziegler and Martrano before the United States Court of Appeals for the Third Circuit. This is the first glaring omission in the memorandum of the Solicitor-General in opposition to the Petition for writ of certiorari.

It is essential to respond to the memorandum in opposition to the Petition for writ of certiorari because of the glaring inaccuracies contained in the memorandum. The Solicitor General seeks



to prejudice the court against this litigant by reciting a number of matters which were contained in the memorandum. The allegations in the memorandum seek to prejudice the Court against petitioner by making the petitioner appear to be a frivolous litigant who should be ignored, regardless of the merits of the case. This is a cynical attitude on the part of the Solicitor-General which should not be sanctioned or rewarded. The memorandum seeks to warp and distort the main issue of the case, the fact that Donald Ziegler ruled on a case in which he was the defendant, by analogising the situation to recusal issues when a judge is made a defendant for the purpose of securing his recusal from a case in which the substantive rights of others are involved. The issue is one of declaratory, and injunctive relief, as well as damages and costs for the denial of John Gagliardi's



right of access to the courts. The amount of damages may be difficult to prove but damages are very real and are not speculative. The right to Petition the Courts for redress of grievances is a fundamental right and is of inestimable value. It is important to recall that Judge Ziegler was not named as a collateral or additional party in the original civil action. He and Catherine Martrano were the only defendants. John Gagliardi was not attempting to recuse Ziegler as the Solicitor General would indicate, but was instead trying to obtain relief against him. Judge Ziegler took the unbelievable step of taking the case from the Clerk and dismissing it before Gagliardi even knew that Ziegler was assigned to it and certainly before Gagliardi had a chance to call for the recusal of the Judge. In fact, it was inconceivable that Judge Ziegler would arrogate to himself a case in which



he was the primary defendant.

The case In re Murchison, 349 US 133, 136, 75 S Ct 623, 99 L.Ed 942, 946 clearly sets the standard to be followed:

A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered.(emphasis added).

Nothing could be clearer! We can think of no other maxim of law on which there should be so little dispute!

"Ordinarily, a judge cannot be a judge of his own cause, - and such principal has long and well recognized that it is



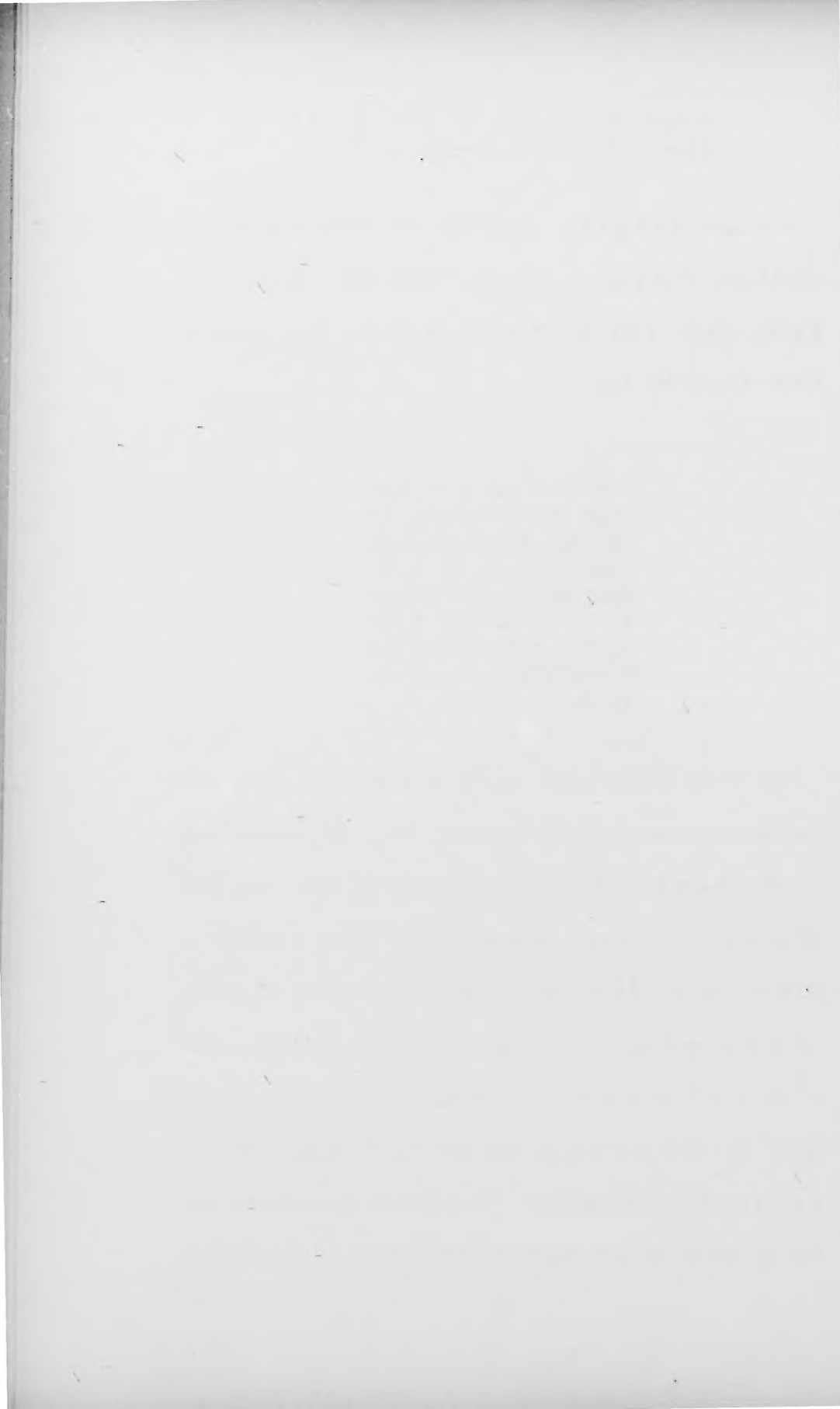


regarded as a maxim of law." CJS 48A, Judges, §119.

Judge Ziegler refers to the case of United States v Will, 449 US 200, 6 L Ed2d 392, 101 S Ct 471 (1980), but omits the following:

"Although a Judge had better not, if it can be avoided, take part in the decision of a case in which he has any personal interest...", id at 213.

In this case, not only did Judge Ziegler have a personal interest, but considering that there are nine judges of the United States District Court for the Western District of Pennsylvania, the case should not have been assigned to Ziegler by the Clerk of the Court, Catherine Martrano, and after it was, it should have been refused by Ziegler. The fact that Ziegler took the case and dismissed it before



Plaintiff even knew that he was assigned to the case indicates clearly that Ziegler acted as a party and not as a judge in the case.

Ziegler and Martrano claim immunity. The question of immunity was waived by Ziegler because he did not raise it in the trial court. Ziegler wrote the memorandum dismissing the case, and he based the entire matter on alleged frivolity, rather than the substantive issue of immunity. Ziegler's attorney raised immunity for the first time on appeal and the question of immunity is not properly before the court. In any event, the concept of total judicial immunity is coming into disfavor, probably because of cases such as this.

Absolute immunity however is strong medicine, justified only when the danger of officials being deflected from the effective performance of their duties is very great,



Forrester v White, 484 US \_\_\_\_, 88 LEd 2d 555, 108 S Ct 538(1988).

Ziegler impaired the effective performance of his duties when he took this case on himself. He now seeks to take advantage of his own wrongdoing. The case is similar to a child who commits patricide and then asks for clemency because of the fact that he is orphaned. Having the case assigned to another Judge would have in no way harmed Ziegler, particularly if the claim asserted was as frivolous as he claimed. His arrogating the case to himself makes one question his motives, including whether he felt that he would minimize his exposure by handling the case himself. Questions such as these are exactly the reason Congress decided in drafting 28 USC §455 that a judge could not act on a case in which he was a



party. It is a per se rule, and so it should be because there will be ALWAYS a question in cases such as this concerning the motives of the judge who acted as a judge in his own case.

The Solicitor General's memorandum contained several factual misstatements. The Solicitor-General claims that, in a totally unrelated case, Judge Ziegler determined that Gagliardi acted for a woman named Janice Bochter without any authority. Judge Ziegler and the Solicitor-General consider this evidence that Gagliardi is a frivolous litigator. The question is irrelevant to this case, but the Court should be aware that the allegation of the Solicitor is a lie. Attached hereto is a copy of an affidavit from Janice Bochter relative to the allegation of the Solicitor General. Finally, the Solicitor General stated that Judge Ziegler was well within





his jurisdiction to bar Gagliardi or any known associate of Gagliardi from filing any lawsuits without leave of court. Such a statement is simply not true. The Court of Appeals vacated Ziegler's actions for failure to make any effort at affording Gagliardi due process of Law. Later, Ziegler himself relented and dismissed his own injunction. The case is not moot, however, because of the damage done to Gagliardi's right of access to the courts during the period in which the gag order was still in effect.

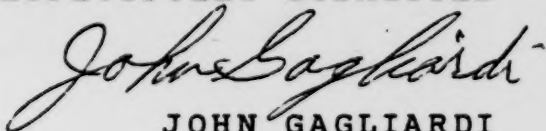
The Supreme Court must be concerned with this case as a result of its concern for the status of the Judicial System and its standing in the eyes of the public. The United States Department of Justice has signaled the Court of Appeals first, and now through the Solicitor-General signals the Supreme Court that it is proper to



ignore the rights of litigants like Gagliardi because such people are engaged in frivolous litigation. John Gagliardi is not going to permit the matter to be swept under the rug. The judicial System is supposed to provide a fair and impartial tribunal for all Americans, and not for just those Americans who have the approval of the Department of Justice. The Court should issue a writ of certiorari to the United States Court of Appeals for the Third Circuit.

Dated March 21, 1988

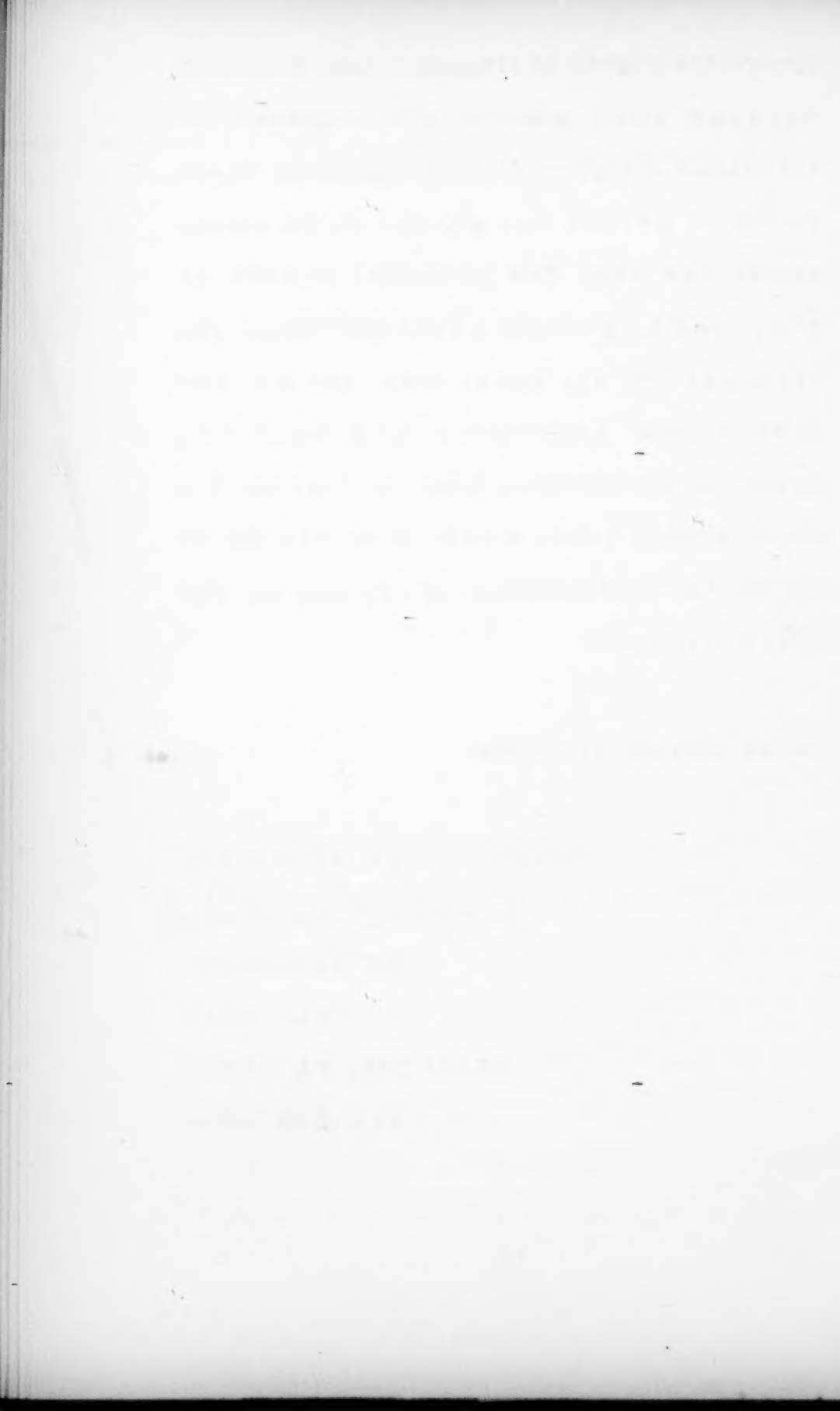
RESPECTFULLY SUBMITTED

  
JOHN GAGLIARDI

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412-233-7700



CERTIFICATE OF SERVICE

I certify that I have this day served the proper number of copies of the foregoing memorandum on the persons at the addresses set forth below, by first class mail, prepaid:

Solicitor General  
Washington, DC 20530

US Attorney  
633 US PO & Court House  
Pittsburgh, PA 15219

Donald Ziegler  
US PO & Courthouse  
Pittsburgh, PA 15219

Dated Mar 22/88

John Baghaidi